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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 SUMOTEXT CORP.,
8 Plaintiff,

9 v.

10 ZOOVE, INC., et al.,
11 Defendants.

Case No. 16-cv-01370-BLF

**ORDER DENYING PLAINTIFF'S
MOTION FOR RELIEF FROM
NONDISPOSITIVE PRETRIAL ORDER
OF A MAGISTRATE JUDGE**

[Re: ECF 323]

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13 Plaintiff Sumotext Corporation has filed a motion for relief (ECF 323) from a
14 nondispositive pretrial ruling issued by Magistrate Judge Cousins (ECF 319). The motion is
15 DENIED for the reasons discussed below.

16 **I. BACKGROUND**

17 The ruling of Judge Cousins which Sumotext disputes addressed Sumotext's motion to
18 compel production of documents in three categories: (1) all emails sent or received by Tim Keyes
19 and Ron Levitt, from May 2015 to the present, that contain or reference any of fourteen specified
20 Sumotext customers; (2) all documents reflecting communications with or shared with the same
21 fourteen Sumotext customers for the period January 1, 2015 to the present; and (3) documents
22 reflecting the amount and date of any payments to Tim Keyes, Ron Levitt, or Steve Doumar for
23 salary, wages, or services rendered since May 2015. With respect to category 1, Sumotext also
24 specifically requested recent emails referenced by Mr. Levitt in a particular email. Sumotext
25 identifies Tim Keyes as the VHT Defendants' COO, Ron Levitt as the VHT Defendants' CFO,
26 and Steve Doumar as StarSteve's CEO.

27 The parties' filed a joint statement of dispute before Judge Cousins on February 8, 2019
28 (ECF 316) and appeared for hearing before Judge Cousins on February 20, 2019 (ECF 319). At

1 the hearing, Defendants' counsel asserted that Defendants had produced all documents responsive
2 to the request for the emails referenced in Mr. Levitt's email, but counsel agreed to conduct a
3 further search and product additional documents responsive to that request if found. Defendants'
4 counsel argued that the remaining requests were overly broad and that category 3 implicated
5 privacy rights of non-parties. Plaintiffs' counsel argued that the document requests were narrowly
6 tailored to discover relevant information.

7 Judge Cousins ruled from the bench, granting Sumotext's motion in part to the extent that
8 Defendants had agreed review the production of documents referenced in Mr. Levitt's email and
9 product any additional documents. Judge Cousins otherwise denied Sumotext's motion, holding
10 as follows:

11 As to the remaining requests, I deny them, finding that they are not
12 proportional to the needs of the case. And the needs of the case at this moment are
13 that you're at the end or past the end of the fact discovery time period. And I have
14 for context the other discovery that has already taken place in the case, both ESI
15 documents and depositions, so those things have already occurred.

16 My main critique of these requests is that they're overly broad in time
17 period, subject matter, and a lack of topic in the emails request and the documents
18 requested. It just goes far beyond -- it might include some relevant information, but
19 it also includes substantial material that in my assessment would not be relevant to
20 any claim or defense in the case.

21 So it's the breadth of what's being sought that is the core deficiency.

22 On the last issue of the wage information, there, too, it might be relevant
23 but, given the burden on the individuals to provide information and the breadth of
24 what's being sought, I don't find it proportional to the needs of the case and there
25 has been other opportunity for discovery on those topics, including depositions and
26 earlier document requests. At this moment, given the stated need versus the burden
27 and the context of where we are in discovery, the request is denied.

28 Hrg. Tr. 17:21 – 18:17, ECF 322. Judge Cousins memorialized his oral ruling in civil minutes
entered on February 20, 2019 (ECF 319).

29 **II. LEGAL STANDARD**

30 A district court may refer nondispositive pretrial matters to a magistrate judge under 28
31 U.S.C. § 636(b)(1)(A). The district court “may reconsider any pretrial matter under this
32 subparagraph (A) where it has been shown that the magistrate judge’s order is clearly erroneous or
33 contrary to law.” 28 U.S.C. § 636(b)(1)(A); *see also* Fed. R. Civ. P. 72(a). “The district court

1 reviews the magistrate’s order for clear error,” and “may not simply substitute its judgment for
2 that of the deciding court.” *Grimes v. City & Cty. of San Francisco*, 951 F.2d 236, 241 (9th Cir.
3 1991).

4 **III. DISCUSSION**

5 Sumotext challenges Judge Cousins’ ruling on two bases. First, Sumotext argues that
6 “[t]he Magistrate’s primary rationale for denying these requests – based on the ‘timing of the
7 requests’ after fact discovery had ended – is contrary to law and is clearly erroneous. Second,
8 Sumotext argues that Judge Cousins failed to properly consider the relevant factors under Federal
9 Rule of Civil Procedure 26(b)(1). That rule provides as follows:

10 Unless otherwise limited by court order, the scope of discovery is as follows:
11 Parties may obtain discovery regarding any nonprivileged matter that is relevant to
12 any party’s claim or defense and proportional to the needs of the case, considering
13 the importance of the issues at stake in the action, the amount in controversy, the
14 parties’ relative access to relevant information, the parties’ resources, the
15 importance of the discovery in resolving the issues, and whether the burden or
16 expense of the proposed discovery outweighs its likely benefit. Information within
17 this scope of discovery need not be admissible in evidence to be discoverable.

18 Fed. R. Civ. P. 26(b)(1).

19 Sumotext mischaracterizes Judge Cousins’ ruling. As set forth above, Judge Cousins
20 stated clearly that “it’s the breadth of what’s being sought that is the core deficiency.” Judge
21 Cousins explained that while “it might include some relevant information, but it also includes
22 substantial material that in my assessment would not be relevant to any claim or defense in the
23 case.” With respect to the financial information of third parties, Judge Cousins did not find
24 persuasive Sumotext’s argument that the information was sought for the purpose of determining
25 the corporate structure and relationships between the defendant entities. Judge Cousins stated that
26 “given the stated need versus the burden and the context of where we are in discovery, the request
27 is denied.”

28 Accordingly, while Judge Cousins did reference the timing of the discovery dispute, that
clearly was not the primary rationale for denying Sumotext’s requests. The Court has reviewed
Judge Cousins’ ruling and the arguments of the parties without considering the timing of the
request for discovery, and it concludes that Judge Cousins’ determinations regarding breadth,

1 relevancy, and burden are appropriate considerations under Federal Rule of Civil Procedure 26(b)
2 and thus are not contrary to law, and those determinations are not clearly erroneous. It is true that
3 Judge Cousins did not expressly address all of the factors listed in Rule 26(b)(1), but Sumotext has
4 not cited, and this Court has not discovered, any authority holding that a magistrate judge must do
5 so. Moreover, as argued by Defendants' counsel at the hearing, Sumotext has not articulated an
6 adequate basis for invading the privacy of the three non-party individuals by requiring production
7 of their finances.

8 Sumotext's motion for relief from Judge Cousins' ruling is DENIED.

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10 Dated: March 20, 2019



BETH LABSON FREEMAN
United States District Judge